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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/699,956
Filing Date: November 03, 2003
Appellant(s): MCLEOD ET AL.

Tenley R. Krueger
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 28, 2007 appealing from the Office action mailed April 3, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. However, it is noted that the application was previously appealed and the Board rendered a decision on July 19, 2006 affirming the examiner.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

A substantially correct copy of appealed claims appears on page 6 of the Appendix to the appellant's brief. The minor errors are as follows: The claims contained an additional claim 43 which was misnumbered through the prosecution of the case, and this claim was not listed in the Claims Appendix. It is reproduced below:

43. The method of claim 43, wherein the film line speed is from about 70 to about 150 feet per minute..

(8) Evidence Relied Upon

6,391,467	DELISIO et al	5-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 43, 44, 51-70 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeLisio et al (see passage bridging columns 1 and 2; col. 2, lines 13-14; col. 2, lines 19-21; see Example 1).

The applied reference discloses the basic claimed method for casting a film consisting essentially of a homopolymer of syndiotactic propylene (ie, sPP--see passage bridging columns 1 and 2) at a film line speed of around 300 ft/minute (see Example 1, col. 5, line 43), wherein the casting occurs on a cast roll or drum maintained at a temperature of 100 to 110 deg F (see Example 1, col. 5, line 44). Although Example 1 is directed to making a coextruded film with skin layers, DeLisio et al also contemplates forming the sPP film without any additional layers, given the disclosure at column 2, lines 19-21.

In essence, DeLisio et al fails to teach the exact film line speed. It is submitted that this aspect would have been an obvious modification to the process of the applied reference since it surely would have been within the skill level of the art to adjust the film line speed from around 300 ft/minute as taught in the reference to the instantly claimed ranges of 35-200 ft/minute (independent claim 43), 70-150 ft/min (misnumbered dependent claim 43) or 90-120 ft/minute (dependent claim 44) dependent on processing time allotted for the production of the film. One of ordinary skill in this art would realize that film line speed is a result effective variable that can clearly be controlled as desired and its exact value would have been determined through routine experimentation. The instant melting temperature of claim 51 is taught in DeLisio et al (see col. 2, lines 13-14) and it is submitted that the recitation of instant claim 72 would be obvious thereover.

Clearly, DeLisio et al is disclosing a process to make an sPP film that is the same as that set forth in the instant claims. Processing aids are conventional in the film casting art and one of ordinary skill would have found them as obvious aspects in the process of the applied reference to facilitate the formation of the film. The exact coefficient of friction, tensile strength, haze, gloss and thickness of the film are result effective variables readily determined and optimized through routine experimentation dependent on the final use for the film.

(10) Response to Argument

Appellant notes that the sPP film of DeLisio et al "can" be fabricated with one or more outer layers and since the (only) Example shows multi-layer cast films, the reference does not envision casting sPP film alone. Such is not agreed with. The reference does indeed teach that outer layers "can" be used and in the very next sentence (see column 2, lines 19-21), DeLisio et al states "[I]If outer layers are used...". This is rather clear evidence that one of ordinary skill in the art would believe that sPP films alone would be cast by the process of DeLisio et al and that outer, skin layers would not be necessary. While they might be advantageous, they are clearly not mandatory or otherwise the reference would not contain the word "if" concerning their use. A reference is to be considered for all it teaches, not merely preferred embodiments, In re Boe, 148 USPQ 507. Also, since the instant claims also call for a processing aid—ie, see claims 52-57—it is not clear why appellant believes that the instant invention would be non-obvious over a process which may also require such an aid. At any rate, such is mere

conjecture at this point, since it has not been shown on record that the casting of DeLisio et al does indeed require a processing aid should the sPP film be cast alone. Very telling in this regard is the fact that **there is no disclosure of any processing aid in the applied reference**. The examiner merely stated, in response to an argument by appellant, that if a processing aid were to be used in the DeLisio et al process, than it would not differ materially from that set forth in instant claims 52-57, which also call for an aid. Since the process of DeLisio et al is performed at the instant temperature, there would presumably be no need for processing aids which reduce stickiness as appellant argues DeLisio et al would need. Clearly, this line of argument is not based on fact and must be erroneous. In short, DeLisio et al teaches the instant invention **except the exact film line speed**. The casting temperature is already taught in DeLisio et al, so arguments directed to casting temperatures having to be extrapolated are not understood. Apparently, appellant believes that the optimization of two parameters (film line speed and temperature) would be beyond the skill level of the art. However, as already noted, only one need be optimized, the film line speed. Appellant also is of the opinion that the prior art has to positively identify a parameter as being a result effective variable before optimization as an argument for obviousness can be employed. However, any one of ordinary skill in this art would know that film line speed is a parameter that would be easily optimized, and hence would have to be a result effective variable. It is respectfully submitted that there is no evidence of record that film line speed is not a result effective variable. Further, there simply is no evidence of record to indicate that the instant claims would be patentable over DeLisio et al.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer. However, it is again noted that a decision was rendered by the Board on July 19, 2006 affirming the examiner in the parent case.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Mathieu D. Vargot

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11/19/07

Conferees:

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